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OFFICE OF PETITIONS

In re Application of :
Jimmy Lee Long : DECISION ON PETITION TO
Application Number: 10/612481 : WITHDRAW HOLDING OF
Filing Date: 07/01/2003 : ABANDONMENT
Attorney Docket Number: ITW- :
14146 :
:

This is a decision on the petition to withdraw the holding of abandonment, filed on August 21, 2008.

The petition is **DISMISSED**.

A Notice of Abandonment was mailed on May 28, 2008, stating that the application is abandoned in view of applicant's failure to file a proper reply to the Office action mailed on June 7, 2007.

Petitioner's counsel asserts that a proper and timely reply was filed, and requests that the abandonment be withdrawn.

A review of the record reveals the following:

1. On July 1, 2003, the application was filed.
2. On June 7, 2007, a final Office action was mailed, setting a three (3) month shortened statutory period for reply.
3. On August 9, 2007 (certificate of mailing date August 6, 2007), an amendment after final rejection was filed.
4. On September 21, 2007, an Advisory Action Before the Filing of An Appeal Brief was mailed, stating that the amendment after final rejection failed to place the application in condition for allowance.

5. On October 19, 2007, a Notice of Appeal was filed, along with a Pre-Appeal Brief Request for Review, and a petition for a one (1)-month extension of time. The one (1) month extension of time fee of \$120.00 and \$500.00 towards the notice of appeal fee were paid.

6. On November 13, 2007, a Notice of Panel Decision from Pre-Appeal Brief Review was mailed, stating the request filed on October 19, 2007, was improper because an additional \$10.00 was required toward the Notice of Appeal fee. The Notice further state that a two (2) month extension of time was required, and that an additional \$340.00 was due for the second month of the extension of time fee.

7. On December 10, 2007, a response was filed, including \$940.00 (\$930.00 towards the balance due for a three (3) month extension of time and \$10.00 towards the balance due for the notice of appeal.)

8. On May 28, 2008, a Notice of Abandonment was mailed.

Petitioner asserts that a proper and timely response to the final Office action mailed on June 7, 2007, was filed.

Petitioner is correct that a proper and timely Notice of Appeal was filed on December 10, 2007. The application is abandoned, however, because an Appeal Brief in response to the Notice of Appeal was not timely filed.

37 CFR 41.37 states, in pertinent part:

- (a)
 - (1) Appellant must file a brief under this section within two months from the date of filing the notice of appeal under § 41.31.
 - (2) The brief must be accompanied by the fee set forth in § 41.20(b) (2)
- (b) On failure to file the brief, accompanied by the requisite fee, within the period specified in paragraph (a) of this section, the appeal will stand dismissed.

Furthermore, the Notice of Panel Decision from Pre-Appeal Brief Review mailed on November 13, 2007, stated that the time period continues to run from the receipt date of the Notice of Appeal. Accordingly, since the Notice of Appeal was filed with a three

(3) month extension of time on November 13, 2007, the Appeal Brief and fee were due not later than June 13, 2008, with a five (5) month extension of time. As a proper reply to the Notice to Appeal was not timely filed, the application is now abandoned.

37 CFR 1.135 states, in pertinent part:

(a) If an applicant of a patent application fails to reply within the time period provided under § 1.134 and § 1.136, the application will become abandoned unless an Office action indicates otherwise.

(b) Prosecution of an application to save it from abandonment pursuant to paragraph (a) of this section must include such complete and proper reply as the condition of the application may require. The admission of, or refusal to admit, any amendment after final rejection or any amendment not responsive to the last action, or any related proceedings, will not operate to save the application from abandonment.

Petitioner may wish to consider filing a petition to revive the application, accompanied by an appeal brief or a request for continued examination and submission under 37 CFR 1.114.

Any request for reconsideration must be filed within **TWO MONTHS** of the date of this decision. **This period may not be extended.**¹

Further correspondence with respect to this matter should be addressed as follows:

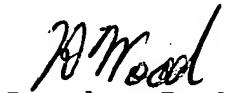
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¹ 37 CFR 1.181(f).

Telephone inquiries concerning this matter may be directed to the undersigned at (571) 272-3231.



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